

111TH CONGRESS
2D SESSION

H. R. 5320

To amend the Safe Drinking Water Act to increase assistance for States, water systems, and disadvantaged communities; to encourage good financial and environmental management of water systems; to strengthen the Environmental Protection Agency's ability to enforce the requirements of the Act; to reduce lead in drinking water; to strengthen the endocrine disruptor screening program; and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 2010

Mr. WAXMAN (for himself and Mr. MARKEY of Massachusetts) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Safe Drinking Water Act to increase assistance for States, water systems, and disadvantaged communities; to encourage good financial and environmental management of water systems; to strengthen the Environmental Protection Agency's ability to enforce the requirements of the Act; to reduce lead in drinking water; to strengthen the endocrine disruptor screening program; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS; REF-**
 2 **ERENCES.**

3 (a) SHORT TITLE.—This Act may be cited as the
 4 “Assistance, Quality, and Affordability Act of 2010”.

5 (b) TABLE OF CONTENTS.—The table of contents of
 6 this Act is as follows:

- Sec. 1. Short title; table of contents; references.
- Sec. 2. Technical assistance for small public water systems.
- Sec. 3. Prevailing wages.
- Sec. 4. Use of funds.
- Sec. 5. Data on variances, exemptions, and persistent violations.
- Sec. 6. Assistance for restructuring.
- Sec. 7. Priority and weight of applications.
- Sec. 8. Disadvantaged communities.
- Sec. 9. Administration of State loan funds.
- Sec. 10. Authorization of appropriations.
- Sec. 11. Negotiation of contracts.
- Sec. 12. Affordability of new standards.
- Sec. 13. Focus on lifecycle costs.
- Sec. 14. Enforcement.
- Sec. 15. Reducing lead in drinking water.
- Sec. 16. Endocrine disruptor screening program.

7 (c) REFERENCES.—Except as otherwise specified,
 8 whenever in this Act an amendment is expressed in terms
 9 of an amendment to a section or other provision, the ref-
 10 erence shall be considered to be made to a section or other
 11 provision of the Safe Drinking Water Act (42 U.S.C. 300f
 12 et seq.).

13 **SEC. 2. TECHNICAL ASSISTANCE FOR SMALL PUBLIC**
 14 **WATER SYSTEMS.**

15 Subsection (e) of section 1442 (42 U.S.C. 300j–1(e))
 16 is amended to read as follows:

17 “(e) TECHNICAL ASSISTANCE.—

1 “(1) IN GENERAL.—The Administrator, directly
2 or through grants or cooperative agreements with
3 nonprofit organizations, may provide technical as-
4 sistance to small public water systems to enable such
5 systems to achieve and maintain compliance with ap-
6 plicable national primary drinking water regulations.

7 “(2) TYPES OF ASSISTANCE.—Technical assist-
8 ance under paragraph (1) may include on-site tech-
9 nical assistance and compliance assistance; circuit-
10 rider technical assistance programs; on-site and re-
11 gional training; assistance with implementing source
12 water protection programs; assistance with increas-
13 ing water or energy efficiency; assistance with de-
14 signing, installing, or operating sustainable energy
15 infrastructure to produce or capture sustainable en-
16 ergy on site or through water transport; assistance
17 with developing technical, financial, and managerial
18 capacity; assistance with long-term infrastructure
19 planning; assistance with applying for funds from a
20 State loan fund under section 1452; and assistance
21 with implementation of monitoring plans, rules, reg-
22 ulations, and water security enhancements.

23 “(3) PRIORITY.—In providing assistance under
24 this subsection, the Administrator shall give priority
25 to assistance that will promote compliance with na-

1 tional primary drinking water standards, public
2 health protection, and long term sustainability of
3 small public water systems. In awarding grants and
4 cooperative assistance under paragraph (1) to non-
5 profit organizations, the Administrator shall (subject
6 to the preceding sentence) give greater weight to
7 nonprofit organizations that, as determined by the
8 Administrator, are most qualified and most effective.

9 “(4) COMPETITIVE PROCEDURES.—It is the
10 presumption of Congress that any award of assist-
11 ance under this subsection will be awarded using
12 competitive procedures based on merit. If assistance
13 is awarded under this subsection using procedures
14 other than competitive procedures, the Adminis-
15 trator shall submit to the Congress, within 90 days
16 of the award decision, a report explaining why com-
17 petitive procedures were not used.

18 “(5) FUNDING.—

19 “(A) AUTHORIZATION OF APPROPRIA-
20 TIONS.—There is authorized to be appropriated
21 to carry out this subsection \$20,000,000 for
22 each of fiscal years 2011 through 2015.

23 “(B) PROHIBITION ON EARMARKS.—No
24 funds made available under this subsection may
25 be used to carry out a provision or report lan-

1 guage included primarily at the request of a
2 Member, Delegate, Resident Commissioner, or
3 Senator providing, authorizing or recom-
4 mending a specific amount of discretionary
5 budget authority, credit authority, or other
6 spending authority for a contract, loan, loan
7 guarantee, grant, loan authority, or other ex-
8 penditure with or to an entity, or targeted to a
9 specific State, locality, or Congressional district,
10 other than through a statutory or administra-
11 tive formula-driven or competitive award proc-
12 ess.

13 “(C) LOBBYING EXPENSES.—No portion of
14 any State loan fund established under section
15 1452 and no portion of any funds made avail-
16 able under this subsection may be used for lob-
17 bying expenses.

18 “(D) INDIAN TRIBES.—Of the total
19 amount made available under this section for
20 each fiscal year, 3 percent shall be used for
21 technical assistance to public water systems
22 owned or operated by Indian Tribes.”.

23 **SEC. 3. PREVAILING WAGES.**

24 Subsection (e) of section 1450 (42 U.S.C. 300j–9)
25 is amended to read as follows:

1 “(e) LABOR STANDARDS.—

2 “(1) IN GENERAL.—The Administrator shall
3 take such action as the Administrator determines to
4 be necessary to ensure that each laborer and me-
5 chanic employed by a contractor or subcontractor of
6 a construction project financed, in whole or in part,
7 by a grant, loan, loan guarantee, refinancing, or any
8 other form of financial assistance provided under
9 this title (including assistance provided by a State
10 loan fund established under section 1452) is paid
11 wages at a rate of not less than the wages prevailing
12 for the same type of work on similar construction in
13 the immediate locality, as determined by the Sec-
14 retary of Labor in accordance with subchapter IV of
15 chapter 31 of title 40, United States Code.

16 “(2) AUTHORITY OF SECRETARY OF LABOR.—
17 With respect to the labor standards specified in this
18 subsection, the Secretary of Labor shall have the au-
19 thority and functions established in Reorganization
20 Plan Numbered 14 of 1950 (5 U.S.C. App.) and sec-
21 tion 3145 of title 40, United States Code.”.

22 **SEC. 4. USE OF FUNDS.**

23 Section 1452(a)(2) (42 U.S.C. 300j–12(a)(2)) is
24 amended—

1 (1) by striking “Except as otherwise” and in-
2 serting the following:

3 “(A) IN GENERAL.—Except as otherwise”;

4 (2) by striking “Financial assistance under this
5 section” and inserting the following:

6 “(B) PERMISSIBLE EXPENDITURES.—Fi-
7 nancial assistance under this section”;

8 (3) by striking “The funds may also be used”
9 and inserting the following:

10 “(D) CERTAIN LOANS.—Financial assist-
11 ance under this section may also be used”;

12 (4) by striking “The funds shall not be used”
13 and inserting the following:

14 “(E) LIMITATION.—Financial assistance
15 under this section shall not be used”;

16 (5) by striking “Of the amount credited” and
17 inserting the following:

18 “(F) SET ASIDE.—Of the amount cred-
19 ited”;

20 (6) in subparagraph (B) (as designated by
21 paragraph (2)) by striking “(not” and inserting
22 “(including expenditures for planning, design, siting,
23 and associated preconstruction activities, for replac-
24 ing or rehabilitating aging treatment, storage, or
25 distribution facilities of public water systems, or for

1 producing or capturing sustainable energy on site or
 2 through the transportation of water through the
 3 public water system, but not”; and

4 (7) by inserting after such subparagraph (B)
 5 the following:

6 “(C) SALE OF BONDS.—If a State issues
 7 revenue or general obligation bonds to provide
 8 all or part of the State contribution required by
 9 subsection (e), and the proceeds of the sale of
 10 such bonds will be deposited into the State loan
 11 fund—

12 “(i) financial assistance made avail-
 13 able under this section may be used by the
 14 State as security for payment of the prin-
 15 cipal and interest on such bonds; and

16 “(ii) interest earnings of the State
 17 loan fund may be used by the State as rev-
 18 enue for payment of the principal and in-
 19 terest on such bonds.”.

20 **SEC. 5. DATA ON VARIANCES, EXEMPTIONS, AND PER-**
 21 **SISTENT VIOLATIONS.**

22 Section 1452(b)(2) (42 U.S.C. 300j–12(b)(2)) is
 23 amended—

24 (1) in subparagraph (B), by striking “and” at
 25 the end;

1 (2) in subparagraph (C), by striking the period
2 as the end and inserting “; and”; and

3 (3) by adding at the end the following:

4 “(D) a list of all water systems within the
5 State that have in effect an exemption or vari-
6 ance for any national primary drinking water
7 regulation or that are in persistent violation of
8 the requirements for any maximum contami-
9 nant level or treatment technique under a na-
10 tional primary drinking water regulation, in-
11 cluding identification of—

12 “(i) the national primary drinking
13 water regulation in question for each such
14 exemption, variance, or violation; and

15 “(ii) the date on which the exemption
16 or variance came into effect or the viola-
17 tion began.”.

18 **SEC. 6. ASSISTANCE FOR RESTRUCTURING.**

19 (a) DEFINITION.—Section 1401 (42 U.S.C. 300f) is
20 amended by adding at the end the following:

21 “(17) RESTRUCTURING.—The term ‘restruc-
22 turing’ means changes in operations (including own-
23 ership, management, cooperative partnerships, joint
24 purchasing arrangements, consolidation, and alter-
25 native water supply).”.

1 (b) RESTRUCTURING.—Clause (ii) of section
 2 1452(a)(3)(B) (42 U.S.C. 300j–12(a)(3)(B)) is amended
 3 by striking “changes in operations (including ownership,
 4 management, accounting, rates, maintenance, consolida-
 5 tion, alternative water supply, or other procedures)” and
 6 inserting “restructuring”.

7 **SEC. 7. PRIORITY AND WEIGHT OF APPLICATIONS.**

8 (a) PRIORITY.—Section 1452(b)(3) (42 U.S.C. 300j–
 9 12(b)(3)) is amended—

10 (1) in subparagraph (A)—

11 (A) in clause (ii), by striking “and” at the
 12 end;

13 (B) in clause (iii), by striking the period at
 14 the end and inserting “; and”; and

15 (C) by adding at the end the following:

16 “(iv) improve the ability of systems to
 17 protect human health and comply with the
 18 requirements of this title affordably in the
 19 future.”;

20 (2) by redesignating subparagraph (B) as sub-
 21 paragraph (D);

22 (3) by inserting after subparagraph (A) the fol-
 23 lowing:

24 “(B) AFFORDABILITY OF NEW STAND-
 25 ARDS.—For any year in which enforcement be-

1 gins for a new national primary drinking water
2 standard, each State that has entered into a
3 capitalization agreement pursuant to this sec-
4 tion shall evaluate whether capital improve-
5 ments required to meet the standard are afford-
6 able for disadvantaged communities in the
7 State. If the State finds that such capital im-
8 provements do not meet affordability criteria
9 for disadvantaged communities in the State, the
10 State’s intended use plan shall provide that pri-
11 ority for the use of funds for such year be given
12 to public water systems affected by the stand-
13 ard and serving disadvantaged communities.

14 “(C) WEIGHT GIVEN TO APPLICATIONS.—
15 After determining priority under subparagraphs
16 (A) and (B), an intended use plan shall provide
17 that the State will give greater weight to an ap-
18 plication for assistance if the application con-
19 tains—

20 “(i) a description of measures under-
21 taken by the system to improve the man-
22 agement and financial stability of the sys-
23 tem, which may include—

1 “(I) an inventory of assets, in-
2 cluding a description of the condition
3 of the assets;

4 “(II) a schedule for replacement
5 of assets;

6 “(III) an audit of water losses;

7 “(IV) a financing plan that fac-
8 tors in all lifecycle costs indicating
9 sources of revenue from ratepayers,
10 grants, bonds, other loans, and other
11 sources to meet the costs; and

12 “(V) a review of options for re-
13 structuring;

14 “(ii) a demonstration of consistency
15 with State, regional, and municipal water-
16 shed plans;

17 “(iii) a water conservation plan con-
18 sistent with guidelines developed for such
19 plans by the Administrator under section
20 1455(a); and

21 “(iv) a description of measures under-
22 taken by the system to improve the effi-
23 ciency of the system or reduce the system’s
24 environmental impact, which may in-
25 clude—

1 “(I) water efficiency or conserva-
2 tion, including the rehabilitation or re-
3 placement of existing leaking pipes;

4 “(II) use of reclaimed water;

5 “(III) actions to increase energy
6 efficiency;

7 “(IV) actions to generate or cap-
8 ture sustainable energy on site or
9 through the transportation of water
10 through the system;

11 “(V) actions to protect source
12 water; and

13 “(VI) actions to reduce disinfec-
14 tion byproducts.”; and

15 (4) in subparagraph (D) (as redesignated by
16 paragraph (2)) by striking “periodically” and insert-
17 ing “at least biennially”.

18 (b) GUIDANCE.—Section 1452 (42 U.S.C. 300j–12)
19 is amended—

20 (1) by redesignating subsection (r) as sub-
21 section (s); and

22 (2) by inserting after subsection (q) the fol-
23 lowing:

24 “(r) SMALL SYSTEM GUIDANCE.—The Administrator
25 may provide guidance and, as appropriate, tools, meth-

1 odologies, or computer software, to assist small systems
 2 in undertaking measures to improve the management, fi-
 3 nancial stability, and efficiency of the system or reduce
 4 the system’s environmental impact.”.

5 **SEC. 8. DISADVANTAGED COMMUNITIES.**

6 (a) ASSISTANCE TO INCREASE COMPLIANCE.—Sec-
 7 tion 1452(b)(3) (42 U.S.C. 300j–12(b)(3)), as amended,
 8 is further amended by adding at the end the following:

9 “(E) ASSISTANCE TO INCREASE COMPLI-
 10 ANCE.—A State’s intended use plan shall pro-
 11 vide that, of the funds received by the State
 12 through a capitalization grant under this sec-
 13 tion for a fiscal year, the State will, to the ex-
 14 tent that there are sufficient eligible project ap-
 15 plications, reserve not less than 4 percent to be
 16 spent on assistance under subsection (d) to
 17 public water systems included in the State’s
 18 most recent list under paragraph (2)(D).”.

19 (b) ASSISTANCE FOR DISADVANTAGED COMMU-
 20 NITIES.—Section 1452(d) (42 U.S.C. 300j–12(d)) is
 21 amended—

22 (1) in paragraph (1), by adding at the end the
 23 following: “Such additional subsidization shall di-
 24 rectly and primarily benefit the disadvantaged com-
 25 munity.”; and

1 (2) in paragraph (3), by inserting “, or portion
2 of a service area,” after “service area”.

3 **SEC. 9. ADMINISTRATION OF STATE LOAN FUNDS.**

4 Section 1452(g) (42 U.S.C. 300j–12(g)) is amend-
5 ed—

6 (1) in paragraph (2)—

7 (A) in the first sentence, by striking “up
8 to 4 percent of the funds allotted to the State
9 under this section” and inserting “, for each
10 fiscal year, an amount that does not exceed the
11 sum of the amount of any fees collected by the
12 State for use in covering reasonable costs of ad-
13 ministration of programs under this section, re-
14 gardless of the source, and an amount equal to
15 the greatest of \$400,000, $\frac{1}{5}$ of one percent of
16 the current valuation of the State loan fund, or
17 6 percent of all grant awards to the State loan
18 fund under this section for the fiscal year,”;
19 and

20 (B) by striking “1419,” and all that fol-
21 lows through “1993.” and inserting “1419.”;
22 and

23 (2) by adding at the end the following:

24 “(5) TRANSFER OF FUNDS.—

1 “(A) IN GENERAL.—The Governor of a
2 State may—

3 “(i) reserve for any fiscal year not
4 more than the lesser of—

5 “(I) 33 percent of a capitaliza-
6 tion grant made under this section; or

7 “(II) 33 percent of a capitaliza-
8 tion grant made under section 601 of
9 the Federal Water Pollution Control
10 Act; and

11 “(ii) add the funds so reserved to any
12 funds provided to the State under this sec-
13 tion or section 601 of the Federal Water
14 Pollution Control Act.

15 “(B) STATE MATCHING FUNDS.—Funds
16 reserved under this paragraph shall not be con-
17 sidered for purposes of calculating the amount
18 of a State contribution required by subsection
19 (e) of this section or section 602(b) of the Fed-
20 eral Water Pollution Control Act.”.

21 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

22 Subsection (m) of section 1452 (42 U.S.C. 300j–12)
23 is amended to read as follows:

24 “(m) AUTHORIZATION OF APPROPRIATIONS.—

1 “(1) IN GENERAL.—There are authorized to be
2 appropriated to carry out this section—

3 “(A) \$1,500,000,000 for fiscal year 2011;

4 “(B) \$2,000,000,000 for each of fiscal
5 years 2012 and 2013;

6 “(C) \$3,200,000,000 for fiscal year 2014;

7 and

8 “(D) \$6,000,000,000 for fiscal year 2015.

9 “(2) AVAILABILITY.—Amounts made available
10 pursuant to this subsection shall remain available
11 until expended.

12 “(3) RESERVATION FOR NEEDS SURVEYS.—Of
13 the amount made available under paragraph (1) to
14 carry out this section for a fiscal year, the Adminis-
15 trator may reserve not more than \$1,000,000 per
16 year to pay the costs of conducting needs surveys
17 under subsection (h).”.

18 **SEC. 11. NEGOTIATION OF CONTRACTS.**

19 Section 1452 (42 U.S.C. 300j–12), as amended, is
20 further amended by adding at the end the following:

21 “(t) NEGOTIATION OF CONTRACTS.—For community
22 water systems serving communities with populations of
23 more than 10,000 individuals, a contract to be carried out
24 using funds made available through a capitalization grant
25 under this section for program management, construction

1 management, feasibility studies, preliminary engineering,
 2 design, engineering, surveying, mapping, or architectural
 3 or related services shall be negotiated in the same manner
 4 as—

5 “(1) a contract for architectural and engineer-
 6 ing services is negotiated under chapter 11 of title
 7 40, United States Code; or

8 “(2) a contract subject to an equivalent State
 9 or local qualifications-based requirement (as deter-
 10 mined by the Governor of the State).”.

11 **SEC. 12. AFFORDABILITY OF NEW STANDARDS.**

12 (a) TREATMENT TECHNOLOGIES FOR SMALL PUBLIC
 13 WATER SYSTEMS.—Clause (ii) of section 1412(b)(4)(E)
 14 (42 U.S.C. 300g–1(b)(4)(E)) is amended by adding at the
 15 end the following: “If no technology, treatment technique,
 16 or other means is included in a list under this subpara-
 17 graph for a category of small public water systems, the
 18 Administrator shall periodically review the list and supple-
 19 ment it when new technology becomes available.”.

20 (b) ASSISTANCE FOR DISADVANTAGED COMMU-
 21 NITIES.—

22 (1) IN GENERAL.—Subparagraph (E) of section
 23 1452(a)(1) (42 U.S.C. 300j–12(a)(1)) is amended—

1 (A) by striking “except that the Adminis-
 2 trator may reserve” and inserting “except
 3 that—

4 “(i) in any year in which enforcement
 5 of a new national primary drinking water
 6 standard begins, the Administrator may
 7 use the remaining amount to make grants
 8 to States whose public water systems are
 9 disproportionately affected by the new
 10 standard for the provision of assistance
 11 under subsection (d) to such public water
 12 systems;

13 “(ii) the Administrator may reserve”;
 14 and

15 (B) by striking “and none of the funds re-
 16 allotted” and inserting “; and

17 “(iii) none of the funds reallocated”.

18 (2) ELIMINATION OF CERTAIN PROVISIONS.—

19 (A) Section 1412(b) (42 U.S.C. 300g-
 20 1(b)) is amended by striking paragraph (15).

21 (B) Section 1415 (42 U.S.C. 300g-4) is
 22 amended by striking subsection (e).

23 (3) CONFORMING AMENDMENT.—Subparagraph

24 (B) of section 1414(c)(1) (42 U.S.C. 300g-

1 3(c)(1)(B)) is amended by striking “(a)(2), or (e)”
2 and inserting “or (a)(2)”.

3 **SEC. 13. FOCUS ON LIFECYCLE COSTS.**

4 Section 1412(b)(4) (42 U.S.C. 300g–1(b)(4)) is
5 amended—

6 (1) in subparagraph (D), by striking “taking
7 cost into consideration” and inserting “taking
8 lifecycle costs, including maintenance, replacement,
9 and avoided costs, into consideration”; and

10 (2) in the matter preceding subclause (I) in
11 subparagraph (E)(ii), by inserting “taking lifecycle
12 costs, including maintenance, replacement, and
13 avoided costs, into consideration,” after “as deter-
14 mined by the Administrator in consultation with the
15 States,”.

16 **SEC. 14. ENFORCEMENT.**

17 (a) **ADVICE AND TECHNICAL ASSISTANCE.**—Section
18 1414 (42 U.S.C. 300g–3) is amended—

19 (1) in the matter following clause (ii) in sub-
20 section (a)(1)(A), by striking “and provide such ad-
21 vice and technical assistance to such State and pub-
22 lic water system as may be appropriate to bring the
23 system into compliance with the requirement by the
24 earliest feasible time”; and

1 (2) in subsection (a)(1), by adding at the end
2 the following:

3 “(C) At any time after providing notice of
4 a violation to a State and public water system
5 under subparagraph (A), the Administrator
6 may provide such advice and technical assist-
7 ance to such State and public water system as
8 may be appropriate to bring the system into
9 compliance with the requirement by the earliest
10 feasible time. In deciding whether the provision
11 of advice or technical assistance is appropriate,
12 the Administrator may consider the potential
13 for the violation to result in serious adverse ef-
14 fects to human health, whether the violation
15 has occurred continuously or frequently, and
16 the effectiveness of past technical assistance ef-
17 forts.”.

18 (b) ADDITIONAL INSPECTIONS.—

19 (1) IN GENERAL.—Section 1414 (42 U.S.C.
20 300g-3) is amended—

21 (A) by redesignating subsections (d)
22 through (i) as subsections (e) through (j), re-
23 spectively; and

24 (B) by inserting after subsection (c) the
25 following:

1 “(d) ADDITIONAL INSPECTIONS FOLLOWING VIOLA-
2 TIONS.—

3 “(1) IN GENERAL.—The Administrator shall,
4 by regulation, and after consultation with the States,
5 prescribe the number, frequency, and type of addi-
6 tional inspections to follow any violation requiring
7 notice under subsection (c). Regulations under this
8 subsection shall—

9 “(A) take into account—

10 “(i) differences between violations
11 that are intermittent or infrequent and vio-
12 lations that are continuous or frequent;

13 “(ii) the seriousness of any potential
14 adverse health effects that may be in-
15 volved; and

16 “(iii) the number and severity of past
17 violations by the public water system; and

18 “(B) specify procedures for inspections fol-
19 lowing a violation by a public water system that
20 has the potential to have serious adverse effects
21 on human health as a result of short-term expo-
22 sure.

23 “(2) STATE PRIMARY ENFORCEMENT RESPONSI-
24 BILITY.—Nothing in this subsection shall be con-

1 strued or applied to modify the requirements of sec-
2 tion 1413.”.

3 (2) CONFORMING AMENDMENTS.—

4 (A) Subsections (a)(1)(B), (a)(2)(A), and
5 (b) of section 1414 (42 U.S.C. 300g-3) are
6 amended by striking “subsection (g)” each
7 place it appears and inserting “subsection (h)”.

8 (B) Section 1448(a) is amended by strik-
9 ing “1414(g)(3)(B)” and inserting
10 “1414(h)(3)(B)”.

11 **SEC. 15. REDUCING LEAD IN DRINKING WATER.**

12 (a) IN GENERAL.—Section 1417 (42 U.S.C. 300g-
13 6) is amended—

14 (1) by adding at the end of subsection (a) the
15 following:

16 “(4) EXEMPTIONS.—The prohibitions in para-
17 graphs (1) and (3) shall not apply to—

18 “(A) pipes, pipe fittings, plumbing fittings,
19 or fixtures, including backflow preventers, that
20 are used exclusively for nonpotable services
21 such as manufacturing, industrial processing,
22 irrigation, outdoor watering, or any other uses
23 where the water is not anticipated to be used
24 for human consumption; or

1 “(B) toilets, bidets, urinals, fill valves,
2 flushometer valves, tub fillers, shower valves,
3 service saddles, or water distribution main gate
4 valves that are 2 inches in diameter or larger.”;
5 and

6 (2) by amending subsection (d) to read as fol-
7 lows:

8 “(d) DEFINITION OF LEAD FREE.—

9 “(1) IN GENERAL.—For the purposes of this
10 section, the term ‘lead free’ means—

11 “(A) not containing more than 0.2 percent
12 lead when used with respect to solder and flux;
13 and

14 “(B) not more than a weighted average of
15 0.25 percent when used with respect to the
16 wetted surfaces of pipes, pipe fittings, plumbing
17 fittings, and fixtures.

18 “(2) CALCULATION.—The weighted average
19 lead content of a pipe, pipe fitting, plumbing fitting,
20 or fixture shall be calculated by using the following
21 formula: For each wetted component, the percentage
22 of lead in the component shall be multiplied by the
23 ratio of the wetted surface area of that component
24 to the total wetted surface area of the entire product
25 to arrive at the weighted percentage of lead of the

1 component. The weighted percentage of lead of each
 2 wetted component shall be added together and the
 3 sum of these weighted percentages shall constitute
 4 the weighted average lead content of the product.
 5 The lead content of the material used to produce
 6 wetted components shall be used to determine com-
 7 pliance with paragraph (1)(B). For lead content of
 8 materials that are provided as a range, the max-
 9 imum content of the range shall be used.”.

10 (b) EFFECTIVE DATE.—The provisions of sub-
 11 sections (a)(4) and (d) of section 1417 of the Safe Drink-
 12 ing Water Act, as added by this section, apply beginning
 13 on January 1, 2012.

14 **SEC. 16. ENDOCRINE DISRUPTOR SCREENING PROGRAM.**

15 Section 1457 of the Safe Drinking Water Act (42
 16 U.S.C. 300j–17) is amended to read as follows:

17 “ENDOCRINE DISRUPTOR SCREENING PROGRAM

18 “SEC. 1457. (a) TESTING OF SUBSTANCES.—

19 “(1) IN GENERAL.—In carrying out the screening
 20 program under section 408(p) of the Federal Food, Drug,
 21 and Cosmetic Act, the Administrator shall provide for the
 22 testing of substances described in paragraph (2) in addi-
 23 tion to the substances described in section 408(p)(3) of
 24 such Act.

25 “(2) COVERED SUBSTANCES.—A substance is subject
 26 to testing pursuant to paragraph (1) if—

1 “(A) the substance may be found in sources of
2 drinking water; and

3 “(B) the Administrator determines that a sub-
4 stantial population may be exposed to such sub-
5 stance.

6 “(3) SUBSTANCES ALREADY SUBJECT TO TEST-
7 ING.—Notwithstanding paragraph (2), a substance is not
8 subject to testing pursuant to paragraph (1) if—

9 “(A) the substance is already subject to evalua-
10 tion determined by the Administrator to be equiva-
11 lent to testing pursuant to paragraph (1); or

12 “(B) the Administrator has already determined
13 the effect of the substance on the endocrine system.

14 “(4) SUBSTANCES DERIVED FROM DEGRADATION OR
15 METABOLISM OF ANOTHER SUBSTANCE.—If a substance
16 subject to testing pursuant to paragraph (1) (in this para-
17 graph referred to as the ‘covered substance’) is derived
18 from the degradation or metabolism of another substance,
19 or is used in or generated by the manufacture of another
20 substance, the Administrator shall provide for such testing
21 of the covered substance by the importer or manufacturer
22 of the other substance.

23 “(b) IDENTIFICATION AND TESTING OF ENDOCRINE
24 DISRUPTING SUBSTANCES THAT MAY BE IN DRINKING
25 WATER.—

1 “(1) IDENTIFICATION.—Not later than 1 year
2 after the date of the enactment of the Endocrine
3 Disruptor Screening Enhancement Act of 2010,
4 after opportunity for comment, the Administrator
5 shall publish—

6 “(A) a list of no fewer than 100 sub-
7 stances for testing pursuant to subsection
8 (a)(1) (in accordance with the schedule speci-
9 fied in paragraph (3)); and

10 “(B) a plan for the identification of addi-
11 tional substances for testing pursuant to sub-
12 section (a)(1), and a schedule for issuing test
13 orders for all such additional substances by not
14 later than 10 years after the date of the enact-
15 ment of the Endocrine Disruptor Screening En-
16 hancement Act of 2010, with the goal of test-
17 ing, at a minimum and consistent with sub-
18 section (a), all substances that have been placed
19 on the Drinking Water Preliminary Contami-
20 nant Candidate List published pursuant to sec-
21 tion 1412(b)(1)(B)(i).

22 In publishing the plan and schedule required by sub-
23 paragraph (B), the Administrator shall obtain advice
24 and direction from the Science Advisory Board.

1 “(2) PRIORITIZATION; CONSIDERATIONS.—In
2 selecting substances for listing under paragraph
3 (1)(A) or identification pursuant to the plan under
4 paragraph (1)(B), the Administrator—

5 “(A) shall prioritize the selection of sub-
6 stances that pose the greatest public health con-
7 cern, taking into consideration (among other
8 factors of public health concern) the effect of
9 such substances on subgroups that comprise a
10 meaningful portion of the general population
11 (such as infants, children, pregnant women, the
12 elderly, individuals with a history of serious ill-
13 ness, and other subpopulations) that are identi-
14 fiable as being at greater risk of adverse health
15 effects due to exposure to substances in drink-
16 ing water; and

17 “(B) shall take into consideration—

18 “(i) available information on the ex-
19 tent of potential public exposures to the
20 substances through drinking water; and

21 “(ii) the Drinking Water Preliminary
22 Contaminant Candidate List published
23 pursuant to section 1412(b)(1)(B)(i).

1 “(3) SCHEDULE.—After publication of the list
2 under paragraph (1)(A), the Administrator shall
3 issue test orders for—

4 “(A) at least 25 substances on the list by
5 the end of each year during the 4-year period
6 following the date of the enactment of the En-
7 docrine Disruptor Screening Enhancement Act
8 of 2010; and

9 “(B) all substances on the list by the end
10 of such 4-year period.

11 “(c) TESTING PROTOCOL PROCESS.—

12 “(1) IN GENERAL.—Not later than 2 years
13 after the date of the enactment of the Endocrine
14 Disruptor Screening Enhancement Act of 2010, the
15 Administrator shall, after opportunity for comment,
16 and after obtaining advice and direction from the
17 Science Advisory Board, publish guidance on devel-
18 oping and updating protocols for testing of possible
19 endocrine disruptors. The guidance shall specify—

20 “(A) the manner in which the Adminis-
21 trator will evaluate and, where necessary, revise
22 such protocols;

23 “(B) the manner in which the Adminis-
24 trator will determine when testing of substances
25 will be required; and

1 “(C) the procedures by which other sci-
2 entifically relevant information can be used in
3 lieu of some or all of the information that oth-
4 erwise would be collected pursuant to testing
5 under section 408(p) of the Federal Food,
6 Drug, and Cosmetic Act.

7 “(2) MINIMUM CONTENTS.—The procedures
8 specified pursuant to paragraph (1)(C) shall ensure
9 that the Administrator may use information that is
10 prepared or provided by any person (including a reg-
11 istrant, manufacturer, or importer of a substance for
12 which testing is required, and any other entity) and
13 shall apply equally with respect to any such person.

14 “(3) AMENDMENTS.—The Administrator may,
15 after opportunity for comment, and after obtaining
16 advice and direction from the Science Advisory
17 Board, amend any guidance published pursuant to
18 this subsection.

19 “(d) REVISION OF TESTING PROTOCOLS.—Not later
20 than 2 years after the date of the enactment of the Endo-
21 crine Disruptor Screening Enhancement Act of 2010, the
22 Administrator shall, after opportunity for comment, deter-
23 mine whether sufficient scientific information has been de-
24 veloped to warrant updating the screening protocols devel-
25 oped under section 408(p) of the Federal Food, Drug, and

1 Cosmetic Act. Not later than 5 years after the date of
 2 the enactment of the Endocrine Disruptor Screening En-
 3 hancement Act of 2010 and every 3 years thereafter, the
 4 Administrator shall determine, consistent with the guid-
 5 ance published under subsection (c), whether to revise
 6 screening protocols under such section based on signifi-
 7 cant improvements in the sensitivity, accuracy, reliability,
 8 reproducibility, or efficiency of such protocols. Whenever
 9 the Administrator revises such a protocol, the Adminis-
 10 trator shall also determine, after obtaining advice and di-
 11 rection from the Science Advisory Board or the advisory
 12 panel referred to in section 25(d) of the Federal Insecti-
 13 cide, Fungicide, and Rodenticide Act, as appropriate,
 14 whether any substance that has already been subjected to
 15 testing should be tested using the revised protocol.

16 “(e) ACCELERATION OF TESTING FOR CERTAIN SUB-
 17 STANCES.—

18 “(1) IN GENERAL.—If the Administrator deter-
 19 mines that—

20 “(A) a substance is known to be found in
 21 sources of drinking water,

22 “(B) a substantial population is known to
 23 be exposed to the substance, and

24 “(C) the substance is either suspected to
 25 be an endocrine disruptor or has a structural

1 similarity to a substance known to be an endo-
2 crine disruptor,
3 the Administrator shall determine whether to require
4 the completion of testing for such substance on an
5 accelerated schedule, to enable the Administrator to
6 determine the effect of such substance on the endo-
7 crine system and ensure the protection of public
8 health.

9 “(2) SCIENTIFICALLY RELEVANT INFORMA-
10 TION.—The Administrator shall make any deter-
11 mination under paragraph (1) using scientifically
12 relevant information. In carrying out the preceding
13 sentence, the Administrator may rely on any avail-
14 able scientifically relevant information, prepared or
15 provided by any person.

16 “(3) GUIDANCE.—Not later than 1 year after
17 the date of the enactment of the Endocrine
18 Disruptor Screening Enhancement Act of 2010, the
19 Administrator shall, after opportunity for comment,
20 publish guidance on how the Administrator will
21 make determinations under paragraph (1).

22 “(f) RESULTS OF TESTING.—

23 “(1) PUBLICATION OF DATA EVALUATION
24 RECORDS.—Not later than 6 months after receipt of
25 testing results for a substance, the Administrator

1 shall prepare and, consistent with subsection (g),
2 publish data evaluation records for such results in a
3 publicly searchable database.

4 “(2) ADMINISTRATIVE ACTION.—Not later than
5 6 months after receipt of testing results for a sub-
6 stance, the Administrator shall—

7 “(A) determine whether to take action re-
8 lated to the substance under section 1412(b) or
9 1445, or other appropriate statutory authority;
10 and

11 “(B) consistent with subsection (g), pub-
12 lish such determination in a publicly searchable
13 database.

14 “(3) STRUCTURED EVALUATION FRAME-
15 WORK.—To assess the overall weight of the evidence
16 and relevance to humans and wildlife of results of
17 testing, the Administrator shall develop and use a
18 structured evaluative framework consisting of
19 science-based criteria, consistent with the protection
20 of public health and the environment, for systemati-
21 cally evaluating endocrine mode of action and for de-
22 termining data relevance, quality, and reliability.

23 “(g) PUBLIC DATABASE.—Beginning not later than
24 180 days after the date of the enactment of the Endocrine
25 Disruptor Screening Enhancement Act of 2010 and con-

1 sistent with section 552 of title 5, United States Code,
2 the Administrator shall publish, in electronic format, a
3 publicly searchable database that contains information re-
4 garding the testing program. Not later than 30 days after
5 the date on which the information becomes available, the
6 Administrator shall ensure that, at a minimum, the data-
7 base—

8 “(1) identifies the substances selected for test-
9 ing under the program; and

10 “(2) includes the documents and information
11 pertaining to the status of testing activities for each
12 such substance, including test orders, deadlines for
13 submission, the Environmental Protection Agency’s
14 data evaluation records, the Administrator’s deter-
15 mination on whether regulatory action will be taken
16 under subsection (f), and the summary of chemical
17 test results.

18 “(h) PETITION FOR INCLUSION OF A SUBSTANCE IN
19 THE PROGRAM.—

20 “(1) IN GENERAL.—Any person may submit a
21 petition the Administrator to—

22 “(A) add a substance to the list under sub-
23 section (b)(1)(A) or identify a substance pursu-
24 ant to the plan under subsection (b)(1)(B); or

1 “(B) issue a test order requiring that a
2 substance be tested on an accelerated basis in
3 accordance with subsection (e).

4 “(2) SPECIFICATION OF FACTS.—Any petition
5 under paragraph (1) shall specify the facts that are
6 claimed to establish that an action described in sub-
7 paragraph (A) or (B) of paragraph (1) is warranted.

8 “(3) ADMINISTRATIVE ACTION.—Not later than
9 90 days after the filing of a petition described under
10 paragraph (1), the Administrator shall determine
11 whether the petition has established that an action
12 described in subparagraph (A) or (B) of paragraph
13 (1) is warranted and shall grant or deny the peti-
14 tion. If the Administrator grants such petition, the
15 Administrator shall promptly add the substance to
16 the list under subsection (b)(1)(A), identify the sub-
17 stance pursuant to the plan under subsection
18 (b)(1)(B), or issue an order requiring testing on an
19 accelerated basis in accordance with subsection (e),
20 as applicable. If the Administrator denies the peti-
21 tion, the Administrator shall publish the reasons for
22 such denial in the Federal Register.

23 “(i) COORDINATION WITH OTHER FEDERAL AGEN-
24 CIES.—After the Administrator—

25 “(1) requires testing of a substance, or

1 “(2) based in whole or in part on the results of
2 testing, takes action related to a substance under
3 section 1412(b) or 1445 or other appropriate statu-
4 tory authority,

5 the Administrator shall give notice of such testing or ac-
6 tion to Federal agencies which are authorized by other
7 provisions of law to regulate the substance or products,
8 materials, medications, processes, or practices that use the
9 substance.

10 “(j) REPORTING REQUIREMENT.—Not later than 1
11 year after the date of the enactment of the Endocrine
12 Disruptor Screening Enhancement Act of 2010 and every
13 3 years thereafter, the Administrator shall provide a re-
14 port to the Committee on Energy and Commerce of the
15 House of Representatives and the Committee on Environ-
16 ment and Public Works of the Senate that describes—

17 “(1) progress made in identifying, testing, and
18 regulating endocrine disruptors as well as plans for
19 future activities;

20 “(2) any change in screening or testing method-
21 ology and evaluation or criteria for evaluating sci-
22 entifically relevant information;

23 “(3) actions taken to ensure communication
24 and sharing of scientific information with other Fed-
25 eral agencies and the public; and

1 “(4) any deviations from the plan or schedule
2 published under subsection (b)(1)(B) as well as the
3 reasons therefor.

4 “(k) TESTING CONSORTIA, COMPENSATION, AND
5 COMPLIANCE.—

6 “(1) IN GENERAL.—Any person required by the
7 Administrator to conduct testing of an endocrine
8 disruptor may—

9 “(A) submit, on its own, data in response
10 to an order for such testing; and

11 “(B) form (on a voluntary basis) a consor-
12 tium in order to satisfy the requirements of one
13 or more orders for such testing.

14 “(2) RELIANCE ON CONSORTIUM SUBMIS-
15 SIONS.—Each member of a consortium described in
16 paragraph (1)(B) shall have full rights to rely on all
17 submissions of the consortium to satisfy the require-
18 ments of any order for testing, but continues to be
19 individually subject to such requirements.

20 “(3) SHARING OF COSTS.—

21 “(A) IN GENERAL.—Each member of a
22 consortium described in paragraph (1)(B) shall
23 share the applicable costs according to appro-
24 priate arrangements established by the consor-
25 tium members.

1 “(B) BINDING OFFER.—Whenever, to sat-
2 isfy the requirements of one or more orders for
3 testing, any person offers to form or join a con-
4 sortium described in paragraph (1)(B), or of-
5 fers compensation to a person that has already
6 submitted data to the Administrator satisfying
7 an order for testing, such offer shall constitute
8 a binding offer to share an appropriate portion
9 of the applicable costs.

10 “(C) APPLICABLE COSTS.—In this sub-
11 section, the term ‘applicable costs’ includes the
12 costs—

13 “(i) incurred to generate and report
14 information to comply with an order for
15 testing; or

16 “(ii) associated with the organization
17 and administration of the consortium.

18 “(4) DISPUTE RESOLUTION.—

19 “(A) IN GENERAL.—In the event of any
20 dispute about an appropriate share or a fair
21 method of determining an appropriate share of
22 applicable costs of the testing requirements in
23 a test order, any person involved in the dispute
24 may initiate binding arbitration proceedings by
25 requesting the Federal Mediation and Concilia-

tion Service to appoint an arbitrator from the roster of arbitrators maintained by such Service or a hearing with a regional office of the American Arbitration Association. A copy of the request shall be sent to each person from whom the requesting party seeks compensation or who seeks compensation from that party.

“(B) NO REVIEW OF FINDINGS AND DETERMINATION.—The findings and determination of the arbitrator in a dispute initiated pursuant to subparagraph (A) shall be final and conclusive, and no official or court of the United States shall have power or jurisdiction to review any such findings and determination, except in the case of fraud, misrepresentation, or other misconduct by one of the parties to the arbitration or by the arbitrator.

“(C) PAYMENT OF FEE AND EXPENSES.—The parties to arbitration initiated pursuant to subparagraph (A) shall share equally in the payment of the fee and expenses of the arbitrator.

“(5) ENFORCEMENT.—If the Administrator determines that any person seeking to comply with an order for testing by relying on a submission made by

1 a consortium or an original data submitter has
2 failed to make an offer in accordance with para-
3 graph (3)(B), to participate in an arbitration pro-
4 ceeding under paragraph (4), or to comply with the
5 terms of an agreement or arbitration decision con-
6 cerning sharing of applicable costs under paragraph
7 (3), that person is deemed to have failed to comply
8 with an order under subparagraph (A) of section
9 408(p)(5) of the Federal Food, Drug, and Cosmetic
10 Act for purposes of subparagraphs (B) and (C) of
11 such section.

12 “(l) DEFINITIONS.—In this section:

13 “(1) The term ‘endocrine disruptor’ means an
14 exogenous agent or mixture of agents that interferes
15 or alters the synthesis, secretion, transport, metabo-
16 lism, binding action, or elimination of hormones that
17 are present in the body and are responsible for ho-
18 meostasis, growth, neurological signaling, reproduc-
19 tion and developmental process, or any other effect
20 that the Administrator has designated as an ‘endo-
21 crine effect’ pursuant to section 408(p)(1) of the
22 Federal Food, Drug, and Cosmetic Act.

23 “(2) The term ‘testing’ means the testing of a
24 substance pursuant to the screening program under
25 section 408(p) of the Federal Food, Drug, and Cos-

1 metic Act, including a test of a substance that is in-
2 tended to identify substances that have the potential
3 to interact with the endocrine system or that is in-
4 tended to determine the endocrine-related effects
5 caused by such substance and obtain information
6 about effects at various doses.

7 “(m) AUTHORIZATION OF APPROPRIATIONS.—To
8 carry out this section, there is authorized to be appro-
9 priated \$5,000,000 for each of fiscal years 2011 through
10 2015.”.

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